

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

AND

IN THE MATTER OF THE COMPLAINT MADE BY ANLIE OUE
THAT SHE WAS DISCRIMINATED AGAINST BY TIW INDUS-
TRIES LTD. WITH RESPECT TO EMPLOYMENT BECAUSE OF
HER SEX.



DECISION

AUGUST 6, 1981

E.J. RATUSHNY
BOARD OF INQUIRY

DECISION

The Complaint of Anlie Oue alleges that her dismissal from employment by the Respondent constituted discrimination by virtue of her sex contrary to Section 4(1)(b) of the Ontario Human Rights Code. The Complaint also alleges a contravention of section 4(1)(g) of the Code, which refers to terms and conditions of employment, by virtue of inadequate facilities and her "being constantly put down". However, there was little evidence to suggest a contravention of section 4(1)(g) and counsel for the Commission conceded as much in argument, relying entirely upon the alleged contravention of section 4(1)(b) i.e. dismissal because of sex.

The Complainant, now a Canadian citizen, was born in China and immigrated to Canada in 1976 at the age of 20. At 13 years of age, she had attended the Canton Oil Research College. Following two years of study and one year as an apprentice, she became a journeyman welder and worked in this capacity in China for some 2 1/2 years. This work experience largely involved maintenance welding work on large oil storage tanks. During her last few months, she acted as the supervisory technician for a group of younger workers.

After her arrival in Canada, it was suggested to her by Canada Manpower Centre officials that she required further training to improve her English and to become familiar with the system of blueprints used in the Western countries of the world. She enrolled in a welding course at the George Brown College of Applied Arts and Technology in Toronto and graduated in August of 1979 as an honour student.

While still a student, she had been placed by the College with "Metal Masters" for part-time work in the fitting and welding of boats. Upon graduation, she continued with this firm for approximately one month. During this last month of employment, she claims to have done "pressure vessel welding".

In mid-September, the Complainant commenced work with the Dominion Bridge Company and continued there until late October. Although she had applied as a welder, she worked only as a structural fitter. When she was released in late October, she was told that her dismissal was due to her inadequacy in reading blue prints. According to her testimony, the company was prepared to retain her as a welder but she declined because she was upset by the criticism of her blue print reading and because of harassment by other employees. She did not do any "pressure vessel welding" during her employment with the Dominion Bridge Company.

The term "pressure vessel welding" is used, generally, to describe the welding of vessels which will be used to contain substances under a high degree of pressure. This type of welding requires a high degree of proficiency. Since improper welding of these vessels could result in considerable danger to life and property through explosion, the slightest welding imperfections must be avoided and X-Rays are used to examine the quality of welds. This type of welding is regulated under an Ontario statute known as the Boilers and Pressure Vessels Act, which is administered by the Pressure Vessel Safety Branch of the Ministry of Consumer and Corporate Affairs.

Section 36 of that Act provides that each firm wishing to weld pressure vessels must submit the specific procedure to be followed for approval and registration. Once that procedure has been registered, every employee of the firm who is to do that type of welding must pass a practical test qualifying that welder in relation to that specific registered procedure. The results of the test are measured against the standards of the Code established by the American Society of Mechanical Engineers (A.S.M.E.), which is internationally recognized. Upon successful completion of the test, the welder is given an identification card from the Ministry of Consumer and Corporate Relations which serves as a record of the test of the welder's performance.

The Complainant passed such a test while at George Brown College. The procedure there did not relate to any commercial process but was merely to demonstrate to prospective employers that the graduate had successfully completed the kind of test administered under the Act. Once hired, the employee would have to re-qualify with respect to the specific welding procedures registered by the employer in question. Upon her employment with the Dominion Bridge Company, the Complainant also passed tests qualifying her to do welding according to the processes of that company although her actual work there did not involve welding.

Upon being released by the Dominion Bridge Company, the Complainant returned to the Canada Manpower Centre and, on October 22nd, was referred to the Respondent company's plant on Eastern Avenue in Toronto for an interview. According to the testimony of the plant manager, Ian Wallace, the Respondent needed welders at the time:

...we required pressure vessel welders, not trainees. We needed them now. At that particular time we had jobs that were running late on delivery and we needed more welders, so we advertised for qualified pressure vessel welders.

Earlier in the month, the Respondent had placed an order with the Canada Manpower Centre for heavy pressure vessel welders with a minimum of five years related experience. Since that source was not very productive, some two weeks later an advertisement was placed in the Toronto Sun newspaper for experienced pressure vessel welders.

The policy of the Respondent at the time was to hire only experienced pressure vessel welders and not "trainee" welders although trainees had been hired in the past. The presence of trainees introduces an element of inflexibility in the deployment of manpower resources because of the limited tasks which they are able to assume during the training period. The hiring of trainees would only be considered during periods when the company could clearly perceive the need for additional welders, for example, six months in the future.

When the Complainant arrived at the Respondent's plant, she underwent the usual procedure for processing applicants. The applicant is interviewed by Tom Shields in the personnel office and fills out an application form. Following that preliminary interview, the welding foreman, Jess Whiteside, conducts a further interview. If the latter is satisfied with the applicant's qualifications, he or she must then pass the A.S.M.E. standards test as well as a medical

examination. The applicant is then hired for a 42 day probationary period to assess the employee's capabilities as a welder, willingness to learn and willingness to get along with supervisors and other employees.

Tom Shields appears to have had some initial doubts with respect to the Complainant. Before processing her, he contacted Mr. Wallace who testified that he gave clear instructions that "if she is qualified, hire her". Anlie Oue was the first woman to apply to the Respondent as a welder since the Second World War. She successfully completed the interviews and the A.S.M.E. standards test and was hired as a probationary employee to commence work on October 30th. Only two male washrooms were available in the plant so that arrangements were made for her to use the washroom and lunchroom facilities in the front office. Ian Wallace commenced discussions with respect to the changing over of one of the plant washrooms to accommodate females, upon the successful completion of the probation period. In his words: "We had great hopes that our female employees in the shop would grow and prosper".

Jess Whiteside, the welding foreman, testified that he explained to the Complainant, on her first day of work, that she would be expected to progress steadily throughout the 42 day probationary period. He added that he would then make his recommendation, following consultation with her supervisors as to whether or not she would be hired. He emphasized that the nature of the product demanded that the welding be of the highest quality. She was provided with exactly the same equipment as other new employees.

The Complainant had a number of years of experience as a welder in China. She performed extremely well as a student. She passed the initial hiring test in accordance with the A.S.M.E. standards and successfully completed the interviews. What is the explanation, then, for her dismissal on December 6th, towards the end of the probationary period?

In the view of this Board, the answer is simply that she was not good enough as a welder to meet the very high standards demanded of all of its welders by the Respondent. Moreover, such high standards are reasonable in the context of the product involved. Her structural welding in the Small Parts Department was rated as from "fair" to "good". Her pressure vessel welding was entirely inadequate. Anlie Oue was not hired as a trainee but as an experienced pressure vessel welder. However, in the initial assessment of her experience, the Respondent was faced with what Jess Whiteside described as "the unknown" of her claim to four years of experience as a pressure vessel welder in China. The A.S.M.E. test assesses only threshold qualifications. It is not at all unusual for employees to pass this test yet fail to cope with the greater demands, including time pressures, on the shop floor.

There is no doubt that the Complainant was keen. She commenced work eagerly in the Small Parts Department, where most new employees are assigned. Ranson Bean testified favourably as to her performance there. Mr. Bean was a gentle and soft-spoken witness. From his demeanor and testimony, it is difficult to imagine him speaking ill of anyone. However, Miss Oue seemed generally to be well-liked. On the

day of her dismissal, Cyril Best, the supervisor of the Small Parts Department provided a report which appears to have attempted to be as positive as possible. It describes her as "extremely argumentive and at times tempermental", unreceptive to constructive criticism and reluctant to follow suggestions. Nevertheless, it expresses the view that her "strong character" will make her a top welder. It recognizes her lack of experience but expresses the view that she would reach the level of the company's top welders "eventually". It also referred to her poor safety habits.

New employees (experienced welders) were expected to "graduate" from the Small Parts Department to the shop floor after about two or three weeks. The initial assignment to the Small Parts Department is to allow the employee to "break in" gradually. There is little, if any, pressure vessel welding for new employees in the Small Parts Department. Moreover, the working environment is in contrast to the noise, grime and awkward working positions on the shop floor. Anlie Que was impatient for her opportunity to progress to pressure vessel welding and did not hesitate to say so. Jess Whiteside felt, on the basis of the reports which he had received from her supervisors, that she was not ready.

Nevertheless, some time after November 21st, she was given an opportunity to work on a heat exchanger. She passed a preliminary test enabling her to do this work and she commenced. A welding engineer, who had been observing her, informed Jess Whiteside that her work was not satisfactory. Mr. Whiteside inspected the work and agreed with the engineer's assessment. However, when he pointed out

the specific inadequacies of the weld to her, she responded by stating that she was doing a good job and that she did not want to return to the Small Parts Department. She simply refused to accept the assessment of both her welding foreman and the welding engineer! She returned to the Small Parts Department but was soon given another opportunity to do pressure vessel welding.

By December 4th, the Complainant's progress report indicated no further improvement, unsatisfactory production and a serious attitude problem. By then, she had completed 30 of the 42 days of her probationary period. On December 3rd, the Complainant was assigned to the night shift on the shop floor. On the morning of December 5th, Jess Whiteside was informed by Jan Mielniczek, another assistant welding foreman, that the Complainant had performed another highly unsatisfactory weld. Mr. Whiteside inspected the weld and described it as a "mess". The weld had to be removed completely and re-done.

That same day, Jess Whiteside met with Ian Wallace and recommended that Anlie Oue be terminated. The recommendation was accepted but Mr. Whiteside was unable to contact Miss Oue and she worked one more shift. The following morning, Mr. Whiteside met with her and informed her of the decision, which was based on her inadequate experience and insufficient progress and which was made in spite of the company's serious need for pressure vessel welders.

Subsequently, Jan Mielniczek informed Jess Whiteside that Anlie Oue had again performed an unsatisfactory weld. This time, the work involved the welding of a test cover on a vessel. The weld was so bad

that it actually leaked water. In assessing the seriousness of these deficiencies it must be born in mind that X-Rays are used to check for minute defects. It is unusual for defects to be apparent to the naked eye and extremely unusual for a weld to be so porous that it would actually leak water. Although the decision to terminate Miss Oue had already been taken, this incident served to confirm the soundness of the decision.

Superficially, then, the circumstances of Anlie Oue's termination may raise a suspicion of discrimination. However, upon closer examination, it is clear that the Respondent acted properly and in accordance with normal practices and standards previously applied to male employees. In fact, she was hired with considerable enthusiasm and given every opportunity. However, she was not hired as a trainee but as a highly skilled worker in a demanding trade.

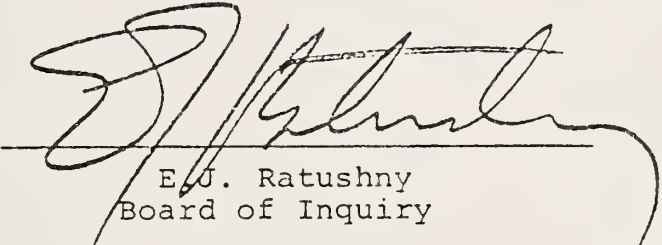
Miss Oue may have been justified in feeling frustrated at her situation. In spite of her previous training and experience, she was forced to return to school in Canada where she was clearly ahead of her fellow students. Her frustration may well have led to impatience and an unrealistic assessment of her experience and qualifications. Although many of her supervisors and fellow workers seemed anxious to help her progress, she seems to have taken the position that she had little to learn.

In the view of this Board, even taking into account her apparent difficulties with the English language, her testimony left much to be desired. She had a tendency to exaggerate both her experience and

the favourable reaction of others to her work. Her suggestions that she was not initially told that she was on probation, that her instructions were not clear, that she was "being constantly put down" and that she was not given proper equipment simply do not bear weight. The suggestion that the deficient work in question may not have been hers can only be described as an attempted smokescreen. In contrast, the testimony of the witnesses for the Respondent was cogent and consistent, with only minor discrepancies which are reasonably explainable by the lapse of time since the incidents in question.

In sum, this Board has decided that no party has contravened the Ontario Human Rights Code in relation to the Complaint of Anlie Oue against T.I.W. Industries Ltd..

Dated this 6th day of August, 1981.



E.J. Ratushny
Board of Inquiry

